IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Tommy Koistinen	Examiner: James Wozniak
Serial No.:	09/980,549	Group Art Unit: 2626
Filed:	April 5, 2002	Docket No.: NC14642US/0038-023US1
Title:	Adaptive Rate Matching for Data or Speech	

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This Appeal Brief is submitted in support of the Notice of Appeal filed February 19, 2008.

I. REAL PARTY IN INTEREST

Nokia Corporation is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

To the best knowledge of Appellant, Appellant's legal representative, and Appellant's assignee, there are no other appeals or interferences which will directly affect or be directly affected by or have a bearing on a decision by the Board of Patent Appeals and Interferences ("the Board") in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-9 are pending in this appeal. No claim is allowed. This appeal is therefore taken from the final rejection of claims 1-9 on November 16, 2007.

IV. STATUS OF AMENDMENTS

No amendment to the claims has been filed subsequent to the final rejection of claims 1-9 on November 16, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 recites a gateway which transmits data to and receives data from a packet network. The gateway detects the load upon the packet network, and adjusts the transfer rate based on the detected load.

Independent claim 1 recites, in its preamble, "a gateway…configured to establish an interface for transmitting data to and receiving data from a packet network." This gateway is shown, for example, in FIG. 1 (3, 5) and FIG. 2 (3), and described, for example, on page 5, lines 1-3 and page 7, lines 7-9 of the specification.

Independent claim 1 further recites, "a plurality of transceiver units…operable with variable transfer rates". These transceiver units are shown, for example, in FIG. 2 (modem 31, codec 33), and described, for example, on page 5, lines 3-4, and on page 7, lines 13-17 and 23-28 of the specification.

Independent claim 1 further recites, "a detecting unit configured to detect a load upon said packet network". The detecting unit is shown, for example, in FIG. 2 (flow controller 34), and is described, for example, in page 8, lines 4-5 of the specification.

Independent claim 1 further recites, "a control unit configured to adjust the transfer rate of said transceiver unit in response to the detected load". The control unit is shown, for example, in FIG. 2 (mode/rate selector 32), and described, for example, in page 8, lines 28-33 of the specification.

Independent claim 1 further recites, "said control unit is configured to provide each of said plurality of transceiver units with different priorities and to adjust the transfer rate of a transceiver unit with a higher priority on a higher value than the transfer rate of a transceiver unit with a lower priority". This is described, for example, on page 10, lines 18-24.

Independent claim 1 further recites, "said transceiver units comprise a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol." This is described, for example, on page 7, lines 13-15 and 23-24.

Independent claim 1 further recites, "said control unit is configured to provide said codec with a higher priority than the modem". This is described, for example, on page 10, lines 18-24.

Independent claim 1 further recites, "said gateway is operatively disposed between a plurality of networks". This is shown, for example, in FIG. 1, and described, for example, on page 7, lines 7-9 and page 1, line 28 to page 2, line 16.

Independent claim 4 recites a method for transferring data to and receiving data from a packet network. The method includes adjusting a transfer rate based on a detected load of the network.

Independent claim 4 recites, "transmitting data to and receiving data from a packet network". This is shown, for example, in FIG. 3 (S4), and described, for example, on page 9, lines 21-22.

Independent claim 4 further recites, "detecting a load on the packet network". This is shown, for example, in FIG. 3 (S1), and described, for example, on page 9, lines 16-17.

Independent claim 4 further recites, "adjusting a transfer rate of a plurality of transceiver units in response to said detected load". This is shown, for example, in FIG. 3 (S2, S3, S4), and described, for example, on page 9, lines 16-22 of the specification.

Independent claim 4 further recites, "providing different priorities for each of said plural transceiver units". This is shown, for example in FIG. 3 (S2, S3, S4), and described, for example, on page 10, lines 18-24 of the specification.

Independent claim 4 further recites, "adjusting a transfer rate of a transceiver unit with a higher priority with a higher value than the transfer rate of the transceiver unit with a lower priority". This is shown, for example, in FIG. 3 (S2, S3, S4), and described, for example, on page 10, lines 18-24 of the specification.

Independent claim 4 further recites, "wherein said transceiver unit comprises a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol, and said codec is provided with a higher priority than the modem". This is shown, for example, in FIG. 2 (modem 31, codec 33) and described, for example, on page 7, lines 13-15 and 22-25, and on page 10, lines 4-16.

Independent claim 4 further recites, "said method is implemented by a gateway that is operatively disposed between a plurality of networks". This is shown, for example, in FIG. 1 (gateway 3), and described, for example, on page 7, lines 7-9 and page 1, line 28 to page 2, line 16.

Independent claim 9 recites a gateway which transmits data to and receives data from a packet network. The gateway detects the load upon the packet network, and adjusts the transfer rate based on the detected load.

Independent claim 9 recites, in its preamble, "a gateway…configured to establish an interface for transmitting data to and receiving data from a packet network." This gateway is shown, for example, in FIG. 1 (3, 5) and FIG. 2 (3), and described, for example, on page 5, lines 1-3 and page 7, lines 7-9 of the specification.

Independent claim 9 further recites, "means for detecting a load on said packet network". This means is shown, for example, in FIG. 2 (flow controller 34), and is described, for example, in page 8, lines 4-5 of the specification.

Independent claim 9 further recites, "means for adjusting a transfer rate of a transceiver means in response to said detected load, wherein said transceiver means comprise a plurality of transceiver means". This means is shown, for example, in FIG. 2 (mode/rate selector 32), and described, for example, in page 8, lines 28-33 of the specification. The transceiver means are shown, for example, in FIG. 2 (modem 31, codec 33), and described, for example, on page 7, lines 13-15 and 23-27.

Independent claim 9 further recites, "means for providing different priorities for each of said plurality of transceiver means and for adjusting a transfer rate of a transceiver means with a higher priority on a higher value than the transfer rate of a transceiver means with a lower priority". This is described, for example, on page 10, lines 18-24.

Independent claim 9 further recites, "said transceiver means comprises a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol, and said codec is provided with a higher priority than the modem." This is described, for example, on page 7, lines 13-15 and 23-24, and on page 10, lines 18-24.

Independent claim 9 further recites, "said gateway is operatively disposed between a plurality of networks". This is shown, for example, in FIG. 1, and described, for example, on page 7, lines 7-9 and page 1, line 28 to page 2, line 16.

The example references to the specification and drawings enumerated herein are believed to provide a "concise explanation of the subject matter" of the enumerated claims, at least with

regard to the patents cited by the Examiner in the rejections of the claims. The example references to the specification and drawings enumerated herein are not intended to be exhaustive of all explanations of the subject matter defined by the claims that is provided by the specification and drawings, as such exhaustive enumeration may involve citing almost all of the specification and drawings for several claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 2, 4-5, and 9 are patentable over Suzuki et al. (U.S. Patent No. 5,493,610) in view of Yletyinen ("*The Quality of Voice Over IP*," 1998).

Whether claims 3 and 6-8 are patentable over Suzuki in view of Yletyinen and further in view of Chang et al. (U.S. Patent No. 5,367,523).

VII. ARGUMENT

A. Claim 1 is not rendered obvious by any combination of Suzuki and Yletyinen

1. Neither Suzuki nor Yletyinen discloses "a detecting unit configured to detect a load upon said network".

The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention under any statutory provision always rests upon the Examiner. *In re Mayne*, 104 F.3d 1339, 41 USPQ2d 1451 (Fed. Cir. 1997); *In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995); *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In rejecting a claim under 35 U.S.C. § 103, the Examiner is required to provide a factual basis to support the obviousness conclusion. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967); *In re Lunsford*, 357 F.2d 385, 148 USPQ 721 (CCPA 1966); *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970).

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If

an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Appellant respectfully submits that the "detecting unit configured to detect a load upon said packet network," recited in claim 1, is not disclosed by either Suzuki or Yletyinen.

Claim 1 recites:

> A device, said device being a gateway and being configured to establish an interface for transmitting data to and receiving data from a packet network, comprising:
> a plurality of transceiver units, each of said plural units being operable with variable transfer rates;
> *a detecting unit configured to detect a load upon said packet network*; and
> a control unit configured to adjust the transfer rate of said transceiver unit in response to the detected load;
> wherein said control unit is configured to provide each of said plurality of transceiver units with different priorities and to adjust the transfer rate of a transceiver unit with a higher priority on a higher value than the transfer rate of a transceiver unit with a lower priority;
> wherein said transceiver units comprise a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol;
> wherein said control unit is configured to provide said codec with a higher priority than the modem, and
> wherein said gateway is operatively disposed between a plurality of networks.

(Emphasis added).

The Office Action dated November 16, 2007, asserts that column 6, lines 1-12, and column 10, lines 61-65 of Suzuki et al., U.S. Patent No. 5,493,610, disclose a "detecting means for detecting the load upon a *network circuit*." Office Action, p.4 (emphasis added). This fails to meet the limitation of claim 1, which recites detecting a load upon a *packet network*. Indeed, Suzuki is entirely directed to a *circuit switched network*, and not a *packet switched network*.

Suzuki, which is entitled "Circuit Multiple Transmission System," discloses a *circuit* transmission system: "[i]n a circuit multiplex transmission system" (Abstract), "[t]his invention relates to a circuit multiple transmission system" (Field of the Invention), "[i]t is therefore an object of this invention to provide a circuit multiple transmission system" (Summary of the Invention). Suzuki does not disclose, and is completely inapplicable to, a "packet network." Therefore, Suzuki does not disclose "transmitting data to and receiving data from a packet network" or "a detecting unit configured to detect a load upon said packet network," as recited in

claim 1. The Office Action does not assert that Yletyinen discloses "a detecting unit configured to detect a load upon said packet network". Therefore, the Office Action has not shown that this element is disclosed by the references, and Appellant respectfully requests that the rejection of claim 1 be reversed at least for this reason.

2. Suzuki in view of Yletyinen fail to disclose or suggest why a person skilled in the art would adjust a transfer rate of a transceiver (which comprises a codec and a modem) for a circuit switched network based on a detected load in a packet switched network.

As discussed above, the initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention under any statutory provision always rests upon the Examiner. *In re Mayne*, 104 F.3d 1339, 41 USPQ2d 1451 (Fed. Cir. 1997); *In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995); *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In rejecting a claim under 35 U.S.C. § 103, the Examiner is required to provide a factual basis to support the obviousness conclusion. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967); *In re Lunsford*, 357 F.2d 385, 148 USPQ 721 (CCPA 1966); *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970).

Where the claimed subject matter involves more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement, a holding of obviousness must be based on "an apparent reason to combine the known elements in the fashion claimed." *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41 (2007). That is, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Thus, obviousness rejections require some evidence in the prior art of a teaching, motivation, or suggestion to combine and modify the prior art references. See, e.g., *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001); *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Appellant respectfully submits that no showing has been

made of a reason to combine the packet switched gateway of Yletyinen with the circuit switched transceiver of Suzuki.

Claim 1 recites, "a control unit configured to adjust the transfer rate of said transceiver unit in response to the detected load". Appellant respectfully submits that it was improper to modify the circuit switched network of Suzuki with the features of the packet switched network disclosed by Yletyinen.

The Office Action cites Yletyinen, "*The Quality of Voice Over IP*," as disclosing device implementation in a Voice over Internet Protocol (VoIP) gateway. The Office Action cites page 8 of Yletyinen as disclosing "a VoIP gateway capable of decoding and encoding speech for [VoIP], which contains multiple transmission/receiving means corresponding to telephone and IP networks for the reception/transmission of speech and other non speech data types." The Office Action cites page 42 of Yletyinen as disclosing a VoIP gateway "capable of adjusting a frame transmission rate in order to respond to congestion, wherein audio *(i.e., speech)* data rates receive priority over the rates for other types of data" (emphasis in original). Yletyinen arguably discloses adjusting a frame or packet rate *within the VoIP (packet switched) network* based on congestion within the *same* VoIP (packet switched) network.

However, these references provide no suggestion or motivation for adjusting a transfer rate of a transceiver such as a codec or modem (which is part of a *circuit switched* network in Suzuki) based on a congestion state or load of a *packet switched* network. Therefore, they do not disclose or suggest "a control unit configured to adjust the transfer rate of said transceiver unit in response to the detected load [upon said packet network]," as recited in claim 1.

3. Suzuki in view of Yletyinen fail to disclose giving speech data priority over non-speech data.

Claim 1 further recites that the "control unit is configured to provide said codec with a higher priority than the modem." As discussed above, to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. The Office Action cited page 42 of Yletyinen as disclosing "audio *(i.e., speech)* data rates receive priority over the rates for other types of data" (emphasis in original). However, the cited portion of Yletyinen lists audio data third out of four data types, and therefore does not disclose giving speech data priority over non-speech data: "[t]he media degradation order is: video, data, audio,

control." Further, Yletyinen does not describe how this degradation is achieved. Yletyinen makes no disclosure of achieving the degradation by controlling the source of the data, as recited by claim 1: claim 1 recites the "control unit configured to adjust the transfer rate of said transceiver unit" and that the "control unit is configured to provide said codec [which is comprised by the transceiver unit] with a higher priority than the modem." Yletyinen discloses only reducing frame or packet rates, reducing bit rates, or turning of media of lesser importance and returning a busy signal. Therefore, no combination of Suzuki and Yletyinen discloses or suggests a "control unit [] configured to provide said codec with a higher priority than the modem," as recited in claim 1.

For the foregoing reasons, Appellant respectfully submits that no combination of Suzuki and Yletyinen discloses or suggests the elements of claim 1, and requests that the rejection of claim 1 be reversed. Appellant further requests that the rejection of claim 2 be reversed at least due to its dependence on claim 1.

B. Claim 4 is not rendered obvious by any combination of Suzuki and Yletyinen

As discussed above, the burden of showing obviousness rests on the examiner. Appellant respectfully submits that neither Suzuki nor Yletyinen discloses "detecting a load on the packet network," that Suzuki in view of Yletyinen fail to disclose or suggest why a person skilled in the art would adjust a transfer rate of a transceiver (which comprises a codec and a modem) for a circuit switched network based on a detected load in a packet switched network, and that Suzuki in view of Yletyinen fail to disclose giving speech data priority over non-speech data.

Claim 4 recites:

A method, comprising:
transmitting data to and receiving data from a packet network;
detecting a load on the packet network;
adjusting a transfer rate of a plurality of transceiver units in response to said detected load;
providing different priorities for each of said plural transceiver units; and
adjusting a transfer rate of a transceiver unit with a higher priority with a higher value than the transfer rate of the transceiver unit with a lower priority;
wherein said transceiver unit comprises a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol, and *said codec is provided with a higher priority than the modem*; and
wherein the method is implemented by a gateway that is operatively disposed between a plurality of networks.

(Emphasis added).

As discussed above, the Office Action dated November 16, 2007, asserts that column 6, lines 1-12, and column 10, lines 61-65 of Suzuki disclose a "detecting means for detecting the load upon a *network circuit*." Office Action, p.4 (emphasis added). However, this fails to meet the limitation of claim 4, which recites detecting a load upon a packet network, because Suzuki is directed to a *circuit switched network*, and not a *packet switched network*.

Further, Suzuki and Yletinen provide no suggestion or motivation for adjusting a transfer rate of a transceiver such as a codec or modem (which is part of a *circuit switched* network in Suzuki) based on a congestion state or load of a *packet switched* network. Therefore, they do not disclose or suggest "adjusting a transfer rate of a plurality of transceiver units in response to said detected load [upon said packet network]," as recited in claim 4.

Further, Suzuki and Yletinen do not disclose "said codec is provided with a higher priority than the modem," because page 42 of Yletyinen lists audio data third out of four data types, and therefore does not disclose giving speech data priority over non-speech data.

For the foregoing reasons, the Office Action dated November 16, 2007 has not shown that claim 4 is obvious in light of Suzuki and Yletinen, and Appellant respectfully requests that the rejection of claim 4 be reversed. Appellant further requests that the rejection of claim 5 be reversed at least due to its dependence on claim 4.

C. Claim 9 is not rendered obvious by any combination of Suzuki and Yletyinen

As discussed above, the burden of showing obviousness rests on the examiner. Appellant respectfully submits that neither Suzuki nor Yletyinen discloses "detecting a load on the packet network," that Suzuki in view of Yletyinen fail to disclose or suggest why a person skilled in the art would adjust a transfer rate of a transceiver (which comprises a codec and a modem) for a circuit switched network based on a detected load in a packet switched network, and that Suzuki in view of Yletyinen fail to disclose giving speech data priority over non-speech data.

Claim 9 recites:

A device, said device being a gateway and being configured to establish an interface for transmitting data to and receiving data from a packet network, comprising:

means for detecting a load on said packet network; and

means for adjusting a transfer rate of a transceiver means in response to said detected load, wherein said transceiver means comprise a plurality of transceiver means;

means for providing different priorities for each of said plurality of transceiver means and for adjusting a transfer rate of a transceiver means with a higher priority on a higher value than the transfer rate of the transceiver means with a lower priority;

where said transceiver means comprises a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol, and *said codec is provided with a higher priority than the modem*; and

wherein said gateway is operatively disposed between a plurality of networks.

(Emphasis added).

As discussed above, the Office Action dated November 16, 2007, asserts that column 6, lines 1-12, and column 10, lines 61-65 of Suzuki disclose a "detecting means for detecting the load upon a *network circuit*." Office Action, p.4 (emphasis added). However, this fails to meet the limitation of claim 9, which recites detecting a load upon a packet network, because Suzuki is directed to a *circuit switched network*, and not a *packet switched network*.

Further, Suzuki and Yletinen provide no suggestion or motivation for adjusting a transfer rate of a transceiver such as a codec or modem (which is part of a *circuit switched* network in Suzuki) based on a congestion state or load of a *packet switched* network. Therefore, they do not disclose or suggest "means for adjusting a transfer rate of a transceiver means in response to said detected load [upon said packet network]," as recited in claim 9.

Further, Suzuki and Yletinen do not disclose "said codec is provided with a higher priority than the modem," because page 42 of Yletyinen lists audio data third out of four data types, and therefore does not disclose giving speech data priority over non-speech data.

For the foregoing reasons, the Office Action dated November 16, 2007 has not shown that claim 9 is obvious in light of Suzuki and Yletinen, and Appellant respectfully requests that the rejection of claim 9 be reversed.

D. Chang does not compensate for the deficiencies of Suzuki and Yletyinen in failing to render claims 3 and 6-8 unpatentable.

The Office Action dated November 16, 2007 cited Chang as disclosing the elements of 3 and 6-8, which depend on claims 1 and 4. Appellant respectfully submits that Chang does not compensate for the deficiencies of Suzuki and Yletyinen in failing to disclose or suggest the elements of claims 1 and 4. Therefore, Appellant respectfully requests that the rejections of claims 1 and 6-8 be reversed.

VIII. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Appellant requests the Honorable Board to reverse each of the Examiner's rejections.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3521.

Respectfully submitted,

Brake Hughes Bellermann LLP
Customer Number 53666
Phone: 208-286-1013

Date June 24, 2008

By /Shane A. Kennedy/
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IX. CLAIMS APPENDIX

1. (Previously presented) A device, said device being a gateway and being configured to establish an interface for transmitting data to and receiving data from a packet network, comprising:

a plurality of transceiver units, each of said plural units being operable with variable transfer rates;

a detecting unit configured to detect a load upon said packet network; and

a control unit configured to adjust the transfer rate of said transceiver unit in response to the detected load;

wherein said control unit is configured to provide each of said plurality of transceiver units with different priorities and to adjust the transfer rate of a transceiver unit with a higher priority on a higher value than the transfer rate of a transceiver unit with a lower priority;

wherein said transceiver units comprise a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol;

wherein said control unit is configured to provide said codec with a higher priority than the modem, and

wherein said gateway is operatively disposed between a plurality of networks.

2. (Previously presented) The device of claim 1, wherein said transceiver units comprise a plurality of predetermined transfer rates and said control unit is configured to select one of said predetermined transfer rates in response to said detected load.

3. (Previously presented) The device of claim 1, wherein said control unit is configured to send a test packet to a predetermined destination over said network, receive said test packet back from said predetermined destination and analyze delay that occurred to determine the load on said network.

4. (Previously presented) A method, comprising:

transmitting data to and receiving data from a packet network;

detecting a load on the packet network;

adjusting a transfer rate of a plurality of transceiver units in response to said detected load;

providing different priorities for each of said plural transceiver units; and

adjusting a transfer rate of a transceiver unit with a higher priority with a higher value than the transfer rate of the transceiver unit with a lower priority;

wherein said transceiver unit comprises a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol, and said codec is provided with a higher priority than the modem; and

wherein the method is implemented by a gateway that is operatively disposed between a plurality of networks.

5. (Previously presented) The method of claim 4, further comprising:

selecting, during said adjusting, one of predetermined transfer rates in response to said detected load;

wherein said transceiver units comprise said plurality of predetermined transfer rates.

6. (Previously presented) The method of claim 4, further comprising:

sending a test packet to a predetermined destination over said network;

receiving said test packet back from said predetermined destination; and

analyzing delay that occurs to determine the load on said network.

7. (Previously presented) The device of claim 2, wherein said control unit is configured to send a test packet to a predetermined destination over said network, receive said test packet back from said predetermined destination and analyze delay that occurred to determine the load on said network.

8. (Previously presented) The method of claim 5, further comprising:

sending a test packet to a predetermined destination over said network;

receiving said test packet back from said predetermined destination; and

analyzing delay that occurred to determine the load on said network.

9. (Previously presented) A device, said device being a gateway and being configured to establish an interface for transmitting data to and receiving data from a packet network, comprising:

means for detecting a load on said packet network; and

means for adjusting a transfer rate of a transceiver means in response to said detected load, wherein said transceiver means comprise a plurality of transceiver means;

means for providing different priorities for each of said plurality of transceiver means and for adjusting a transfer rate of a transceiver means with a higher priority on a higher value than the transfer rate of the transceiver means with a lower priority;

where said transceiver means comprises a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol, and said codec is provided with a higher priority than the modem; and

wherein said gateway is operatively disposed between a plurality of networks.

X. EVIDENCE APPENDIX

Appellant is unaware of any evidence that is required to be submitted in the present Evidence Appendix.

XI. RELATED PROCEEDINGS APPENDIX

Appellant is unaware of any related proceedings that are required to be submitted in the present Related Proceedings Appendix.